

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 04-10146-WGY
)
ROBERT RAMOS)

GOVERNMENT'S MOTION FOR MENTAL COMPETENCY EVALUATION

The United States of America, by and through the undersigned counsel, hereby moves for a competency evaluation of Defendant Robert Ramos at a Bureau of Prisons facility pursuant to 18 U.S.C. §§4241 and 4247.

BACKGROUND

Defendant has pleaded guilty to one count of use of interstate commerce facilities in the commission of murder-for-hire and two counts of interstate travel in the commission of murder-for-hire. Defendant's counsel has submitted to the Probation Department a Forensic Psychological Evaluation of Defendant Robert Ramos prepared by John Daignault, Psy.D.. Defense counsel appears to be laying a foundation for arguing that Defendant should be sentenced below the applicable sentencing guidelines range based on his alleged diminished capacity and alleged extraordinary mental and emotional condition.

The Court has scheduled Defendant's sentencing hearing in this case for April 12, 2005.

DISCUSSION

In order to assess the merits of Defendant's request for a

downward departure, the government seeks to have a separate evaluation of Defendant's mental health conducted pursuant to 18 U.S.C. §4241(a). The government requests the Court to order, pursuant to 18 U.S.C. §4241(b), that a psychiatric or psychological examination of Defendant be conducted and filed with the Court. In so doing, the government is not suggesting that Defendant is incompetent or entitled to any diminished capacity departure.

Under 18 U.S.C. §4247(b), the Court may commit a person to the custody of the Attorney General for placement in a suitable facility for a period not to exceed thirty days for the purposes of a psychological or psychiatric evaluation. Defendant is already in custody. The government is simply seeking to have Defendant's mental condition and health evaluated by the staff at a facility operated by the Bureau of Prisons to provide the Court and the parties with a thorough and impartial psychological assessment of Defendant before his sentencing. Defendant would be under the care and observation of a trained professional staff on a regular basis for several weeks. The staff of the Federal Bureau of Prisons includes individuals who are experienced in dealing with various mental health issues. Accordingly, the government requests that the Court commit Defendant to the custody of the Attorney General for an evaluation in accordance with 18 U.S.C. §4247(b).

The government further requests that the Court direct that the examiner file a report with the Court (and provide copies of the report to counsel for the government and Defendant) pursuant to 18 U.S.C. §4247(c) that includes: (1) the defendant's history and present symptoms; (2) a description of the psychiatric, psychological, and medical tests that were employed and their results; (3) the examiner's findings; (4) the examiner's opinion as to diagnosis and prognosis; and (5) answers to the following questions:

- a. Did the defendant commit the offenses while suffering from a significantly reduced mental capacity?

"Significantly reduced mental capacity" means a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offenses or to exercise the power of reason; or (B) control behavior that the defendant knows is harmful.

- b. If the defendant committed the offenses while suffering from a significantly reduced mental capacity, was this caused by the voluntary use of drugs or other intoxicants?
- c. If the defendant committed the offenses while suffering from a significantly reduced mental capacity, to what extent did this reduced mental capacity contribute to the commission of the offenses?

- d. What recommendations (if any) does the examiner have as to how the mental condition of the defendant should affect the sentence?¹

CONCLUSION

For the foregoing reasons, the government requests that the Court grant this request for a competency evaluation pursuant to 18 U.S.C. § 4241 and direct, pursuant to 18 U.S.C. §4241(b) and 4247(b), that the defendant be committed to the custody of the Attorney General for a period of thirty (30) days so that a psychiatric or psychological report can be prepared in accordance with 18 U.S.C. §4247(b) and (c). A proposed order is enclosed.

Respectfully Submitted,

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

By: /s/ Emily R. Schulman
EMILY R. SCHULMAN
Assistant U.S. Attorney

Dated: March 18, 2005

CERTIFICATE OF SERVICE

I, Emily R. Schulman, hereby certify that I have served a copy of the foregoing motion and attached proposed order on counsel of record, Barry P. Wilson, Esq., 240 Commercial Street, Boston, MA 02109, by electronic mail and first-class mail,

¹ The first three questions are based upon the standards for a diminished capacity departure that are set forth in U.S.S.G. §5K2.13. The final question is based upon the language of 18 U.S.C. §4247(c)(4)(E). Direct responses to these questions may assist the parties and the Court in assessing the defendant's applicable guideline range under the Sentencing Guidelines.

postage prepaid this date.

/s/ Emily R. Schulman
EMILY R. SCHULMAN
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 04-10146-WGY
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ROBERT RAMOS)	

ORDER

Pursuant to 18 U.S.C. § 4241 and § 4247, the Court hereby orders that defendant ROBERT RAMOS is committed to the custody of the Attorney General for placement in a suitable facility for a period not to exceed thirty (30) days for the purposes of a psychological or psychiatric evaluation.

It is hereby ORDERED that the examiner shall file a report with the Court and provide copies of the report to counsel for the government (Assistant U.S. Attorney Emily R. Schulman) and counsel for the defendant (Barry P. Wilson, Esq.) pursuant to 18 U.S.C. §4247(c) that includes: (1) the defendant's history and present symptoms; (2) a description of the psychiatric, psychological, and medical tests that were employed and their results; (3) the examiner's findings; (4) the examiner's opinion as to diagnosis and prognosis; and (5) answers to the following questions:

- a. Did the defendant commit the offenses while suffering from a significantly reduced mental capacity?

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wrongfulness of the behavior comprising the offenses or to exercise the power of reason; or (B) control behavior that the defendant knows is harmful.

- b. If the defendant committed the offenses while suffering from a significantly reduced mental capacity, was this caused by the voluntary use of drugs or other intoxicants?
- c. If the defendant committed the offenses while suffering from a significantly reduced mental capacity, to what extent did this reduced mental capacity contribute to the commission of the offenses?
- d. What recommendations (if any) does the examiner have as to how the mental condition of the defendant should affect the sentence?

A copy of this Order shall be provided to the United States Marshals Service forthwith.

Dated: _____

WILLIAM G. YOUNG
Chief, United States District Judge